

12C#008377

EDWARD E. GILLEN COMPANY
10134 North Port Washington Road
Mequon, Wisconsin 53092,

and

EDWARD E. GILLEN MARINE, LLC
10134 North Port Washington Road
Mequon, Wisconsin 53092,

Plaintiffs,

v.

F.H. PASCHEN, S.N. NIELSEN
& ASSOCIATES, LLC,
5515 North East River Road
Chicago, Illinois 60656,

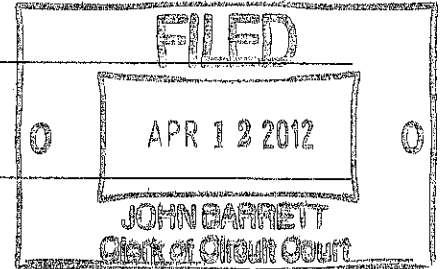
Defendant.

Case No.:
Case Code: 30303

HON. MICHAEL WHITE, BR. 01
CIVIL D

SUMMONS

THE STATE OF WISCONSIN



To each person named above as a defendant:

You are hereby notified that the Plaintiffs named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

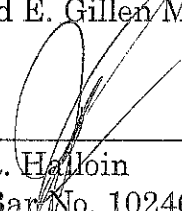
Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow

the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, Wisconsin 53233 and to Plaintiff's attorney, Scott R. Halloin, Esq., whose address is Halloin & Murdock, S.C., 839 North Jefferson Street, Suite 503, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated April 12, 2012.

HALLOIN & MURDOCK, S.C.
Attorneys for the Plaintiffs,
Edward E. Gillen Company and
Edward E. Gillen Marine, LLC



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EDWARD E. GILLEN COMPANY,
10134 North Port Washington Road
Mequon, Wisconsin 53092,

and

EDWARD E. GILLEN MARINE, LLC
10134 North Port Washington Road
Mequon, Wisconsin 53092,

Plaintiffs,

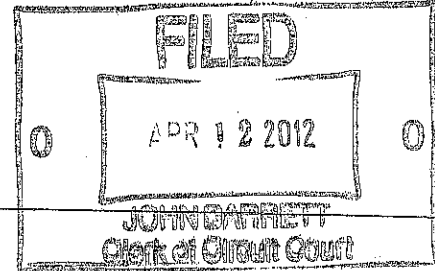
v.

Case No.

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F.H. PASCHEN, S.N. NIELSEN
& ASSOCIATES, LLC,
5515 North East River Road
Chicago, Illinois 60656,

Defendant.



COMPLAINT

Plaintiffs the Edward E. Gillen Company and Edward E. Gillen Marine, LLC,
by their attorneys Halloin & Murdock, S.C., complaint of Defendant F.H. Paschen,
S.N. Nielsen & Associates, LLC, as follows:

PARTIES

1. Edward E. Gillen Company ("Gillen") is a Wisconsin S-corporation
with its principal office located at 10134 North Port Washington Road, Mequon,
Wisconsin 53092.

2. Edward E. Gillen Marine, LLC ("Gillen Marine") is a Wisconsin limited liability company with its principal office located at 10134 North Port Washington Road, Mequon, Wisconsin 53092.

3. F.H. Paschen, S.N. Nielsen & Associates, LLC ("FHP"), is an Illinois limited liability company with its principal office located at 5515 North East River Road, Chicago, Illinois 60656. FHP's registered agent for service of process is Edward J. Burke, 70 West Madison Street, #4300, Chicago, Illinois 60602.

JURISDICTION AND VENUE

4. Jurisdiction is proper under Wisconsin Statutes sections 801.05(1)(c), (1)(d), (3), (5) and (6)(a), (b), and (c), because the injuries to Gillen occurred in Wisconsin and were caused by an entity who engages in substantial and ongoing business in many states, including Wisconsin. In addition, many of the activities that took place with respect to the contractual agreement between the parties took place in Wisconsin, and the Defendant had managerial involvement and knowledge of the Wisconsin activities at all relevant times. The claims in this lawsuit also focus on the use, acquisition, and control of materials within and without the state of Wisconsin, as well as the use and control of property within and without the state of Wisconsin from which the Defendant derived a benefit.

5. Venue is proper under Wisconsin Statutes sections 801.50(2)(a), (c), and (d) because the relevant injuries of this complaint occurred in Milwaukee County and because the Defendant conducts substantial business throughout Wisconsin and Milwaukee County.

FACTS COMMON TO ALL COUNTS

6. Gillen, FHP, and non-party, Skipper Marine Development, Inc., entered into a Joint Venture Agreement on September 15, 2009, for the purpose of preparing and submitting bids to the Public Building Commission of Chicago ("PBCC"), and for executing and carrying out the contracts awarded to the Joint Venture by the PBCC (the "Joint Venture").

7. FHP is the managing party of the Joint Venture and has a 51% interest in the Joint Venture.

8. Gillen has a 30% interest in the Joint Venture.

9. The Joint Venture was awarded the contract by the PBCC for the construction of the 31st Street Breakwater in Chicago, Illinois (the "Breakwater Project").

10. On July 20, 2010, the Joint Venture entered into a subcontract with Gillen, whereby Gillen was to provide all labor, material, equipment, and supervision required to fabricate, deliver and install all stone, sheeting, H-Piles, and navigation lights, among other things, for the Breakwater Project (the "Gillen Subcontract"). Gillen's work for the Joint Venture included mining and harvesting rip rap from the Pembine, Wisconsin, worksite and transporting said materials through Wisconsin and barging to the Breakwater Project. Substantial business activities were conducted in the State of Wisconsin.

11. Gillen entered into a contract with ISP Minerals, Inc., for the supply of the stone for the Breakwater Project.

12. After the Breakwater Project began, ISP Minerals was unable to meet its stone production commitment, significantly disrupting the completion of the as-built test section, as well as impacting the cost of the completion of the Breakwater Project.

13. As a result of ISP Minerals' disruption, Gillen's equipment and manpower requirements had to be increased to meet the shortened completion period and to enable the marina's opening by the spring 2012 deadline.

14. Gillen and FHP entered into an Advance Payment Agreement on October 26, 2011, whereby FHP agreed to advance funds to the Joint Venture to enable Gillen to meet its payment obligations for the Breakwater Project.

15. A true and correct copy of the Advance Payment Agreement is attached hereto as Exhibit A.

16. The funds to be advanced by FHP under the Advance Payment Agreement were to be paid to Gillen in Wisconsin.

17. Gillen fully and timely performed each and every condition of the Advance Payment Agreement, including all conditions precedent to FHP's performance.

18. At all times, FHP was the manager of all phases of the Breakwater Project, including the Wisconsin activities and activities that were performed in Wisconsin.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

19. Gillen and Gillen Marine re-allege and incorporate all paragraphs of this complaint as if fully set forth within this claim.

20. The Advance Payment Agreement reads in relevant part as follows:

“FHP agrees to advance funds in the form of a loan to the FHP/EGC Joint Venture as authorized by the Joint Venture Agreement, as EGC is presently unable to make a capital contribution and unable to meet its payment obligations on the 31st Street Harbor-Coastal project. The FHP loan is provided to the FHP/EGC Joint Venture to enable EGC to complete the work under its sub contract agreement by December 16, 2011.”

...

“FHP agrees to act promptly to review the deposit requests and all documents supporting the said requests, make deposits of funds in the Joint Venture account and cause the Joint Venture to make deposits in the account or accounts at MB Financial Bank upon approval of the documentation.”

21. Starting in December 2011, FHP failed to advance funds as required by the Advance Payment Agreement.

22. Sometime between January 3, 2012, and January 6, 2012, Gillen advised FHP of the payment defaults and Gillen’s intention to stop work until payment was made.

23. On or about January 5, 2012, FHP advised Gillen that it was terminating its contractual relationships with Gillen and kicked Gillen off the Illinois worksite, but not the Wisconsin worksite. FHP also improperly seized marine equipment and materials, including four boats and multiple barges. The

majority of the marine assets have been leased by Gillen and are not owned by Gillen. Upon information and belief, FHP has seized other assets owned by Gillen.

24. FHP breached the Advance Payment Agreement by failing to make payments as required by the Advance Payment Agreement.

25. FHP breached the Advance Payment Agreement by failing to pay \$358,058.00 to Gillen and \$4,908,796.20 to subcontractors. Some of Gillen's subcontractors have attempted to recover such monies from Gillen, even though Gillen has not been paid by FHP for work completed at the Breakwater Project.

26. Gillen has suffered damages as a result of FHP's breach of the Advance Payment Agreement.

27. The damages suffered by Gillen are the direct and proximate result of FHP's breach of the Advance Payment Agreement.

SECOND CAUSE OF ACTION
DECLARATORY JUDGMENT

28. Gillen and Gillen Marine re-allege and incorporate all paragraphs of this complaint as if fully set forth within this claim.

29. An actual and bona fide controversy exists between Gillen and FHP as to their rights, status, and other legal relations under the Advance Payment Agreement.

30. A declaration, judgment, or decree in this action will terminate the controversy or afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations between the parties.

31. Gillen, therefore, seeks a declaratory judgment from the Court as follows:

- a. That FHP has no ability to seize any property because it is in breach of the Advance Payment Agreement;
- b. That FHP has no authority or right under the Advance Payment Agreement to seize property belonging to or leased by Gillen;
- c. That FHP has no authority or right under the Advance Payment Agreement to seize property belonging to Gillen Marine;
- d. That FHP may not continue to use Gillen Marine's property after termination of the Gillen Subcontract; and
- e. That Gillen has no obligation to continue to comply with the Advance Payment Agreement if and after FHP terminated its contractual relationships with Gillen.

THIRD CAUSE OF ACTION
CONVERSION

32. Gillen and Gillen Marine re-allege and incorporate all other paragraphs of this complaint as if fully set forth within this claim.

33. On or about January 6, 2012, FHP advised that it was seizing all equipment and materials at the project site, including but not limited to four boats and multiple barges.

34. Not all of the equipment seized by FHP is owned by Gillen. Much of the equipment is owned by Gillen Marine. Many of the remaining pieces of equipment are being leased by Gillen from third parties.

35. FHP intentionally took property owned by Gillen Marine, including but not limited to barges, tugs, excavators, cranes, boats and other equipment.

36. FHP took Gillen Marine's property without the consent of Gillen Marine and without lawful authority.

37. FHP's taking of Gillen Marine's property seriously interfered with the right of Gillen Marine to possess the property.

38. FHP intended to deal with Gillen Marine's property in a way that would seriously interfere with Gillen Marine's possession of the property.

39. Gillen Marine has suffered damages as a result of FHP's taking of Gillen Marine's property.

40. The damages suffered by Gillen Marine are the direct and proximate result of FHP's taking of Gillen Marine's property.

WHEREFORE, Plaintiffs demand judgment:


- a. Awarding Gillen actual damages and compensatory damages.
- b. Awarding Gillen Marine actual damages, compensatory damages, and punitive damages.
- c. Awarding Plaintiffs statutory attorneys' fees;
- d. Awarding Plaintiffs statutory costs; and
- e. Granting such other and further relief as the Court deems appropriate.

JURY DEMAND

Plaintiffs demand a trial by a jury of twelve (12).

Dated April 12, 2012.

HALLOIN & MURDOCK, S.C.
Attorneys for Plaintiffs,
Edward E. Gillen Company and
Edward E. Gillen Marine, LLC



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EDWARD E. GILLEN CO. ADVANCE PAYMENT AGREEMENT

This Agreement made this 26th day of October, 2011 by F.H. Paschen, S.N. Nielsen & Associates, LLC., an Illinois Limited Liability Company ("FHP") with its principal place of business a 8725 W. Higgins Road, Suite 200, Chicago, Illinois and Edward E. Gillen Co. ("EGC") a Wisconsin Limited Liability Company having its principal place of business at 218 Becher Street, Milwaukee, Wisconsin 53207.

WHEREAS, FHP and EGC entered into a Joint Venture Agreement dated September 15, 2009 for the purpose of bidding on the 31st Street Harbor-Coastal project at 3155 S. Lake Shore Drive, Chicago, Illinois owned by Public Building Commission of Chicago, and if awarded a contract by the owner to perform the said work described in the owner's construction documents;

AND, WHEREAS, the said Joint Venture Agreement provides, among other things, that a Joint Venture party may, but is not obligated to make advances of funds to another party for its working capital contribution when that party is unable to do so;

AND, WHEREAS, the Joint Venture Agreement also provides that a joint venture party may undertake work on the said project as a subcontractor to the joint venture; and, that FHP is named the Managing Party who has the power to request the Parties to advance working capital to the Joint Venture among other powers set forth in the Joint Venture Agreement;

AND, WHEREAS, EGC entered into a Subcontract Agreement ("Agreement") dated July 20, 2010, known as Contract Number 2407-003 pursuant to which EGC is to provide all labor, material, equipment, and supervision required to fabricate, deliver and install all stone, sheeting, H-Piles, navigation lights, surge pipe, select fill, barging, hydraulic barrier SSP wall as indicated on the contract documents for the owner Public Building Commission of Chicago located at 31st Street Harbor-Coastal, 3155 S. Lake Shore Drive, Chicago, Illinois, PBC Contract No. 2407, for the original contract amount of \$26,422,263.00;

AND, WHEREAS, EGC began performance of the work and encountered certain difficulties with a supplier of stone for the project, was compelled to contract with an alternate supplier of that material, and experienced other problems in performing the subcontract work which caused delays and extra unanticipated expense;

AND, WHEREAS, EGC has requested advances of funds for working capital from FHP in order to continue its performance of the work called for by its subcontract agreement with the joint venture;

AND, WHEREAS, FHP has agreed to advance funds to EGC up to the earned subcontract value less reserves for retainage, EEOC penalties, liquidated damages, fees along with other expenses incurred, and to be incurred by FHP related to the job all in accordance with the terms and conditions herein after set forth;

NOW THEREFORE, in consideration of the mutual promises and agreements herein given to one another, EGC and FHP agree as follows:

1. FHP agrees to advance funds in the form of a loan to the FHP/EGC Joint Venture as authorized by the Joint Venture Agreement, as EGC is presently unable to make a capital contribution and unable to meet its payment obligations on the 31st Street Harbor-Coastal project . The FHP loan is provided to the FHP/EGC Joint Venture to enable EGC to complete the work under its sub contract agreement by December 16, 2011.
2. EGC agrees to establish an account or accounts with MB Financial Bank into which FHP/EGC Joint venture will deposit funds as contract payments as they are received from FHP so that EGC may make timely payments to workers and suppliers on the 31st Street Harbor-Coastal project only. If EGC uses any of the advanced funds for any other purpose than noted above the loan will become immediately due and payable in full and no further FHP advances to the FHP/EGC Joint Venture will be made.
3. EGC agrees to draw checks on the said bank account or accounts for payments to suppliers, sub-subcontractors, equipment lessors, service providers and workers on the 31st Street Harbor-Coastal project which have been approved in advance for such payment by FHP. Each payment request shall be submitted to FHP in advance of releasing any of the said checks and shall be accompanied with a copy of the check, waivers of lien by each payee together with copies of invoices and such other documents as FHP shall reasonably request. If suppliers will not issue a waiver prior to receiving a check, EGC will obtain the waivers after check issuance and present them to FHP. FHP will not approve a subsequent payment to a supplier if a waiver covering a previous payment has not been received by EGC and furnished to FHP.
4. FHP agrees to act promptly to review the deposit requests and all documents supporting the said requests, make deposits of funds in the Joint Venture account and cause the Joint Venture to make deposits in the account or accounts at MB Financial Bank upon approval of the documentation. In the event a payment proposed by EGC is not approved by FHP for any reason, EGC agrees to obtain a revised payment request from the supplier and resubmit it to FHP with the next payment request.
5. EGC agrees that FHP may examine EGC's books and records pertaining to the 31st Street Harbor-Coastal project at its office at 218 Becher Street, Milwaukee, Wisconsin at all reasonable times, and may verify payments made by contacting any payee of a check from the account or accounts at MB Financial Bank.
6. EGC agrees that the EGC/FHP Joint Venture will repay the advances made by FHP to the Joint Venture out of payments made by Public Building Commission of Chicago on the 31st Street Harbor-Coastal project to reduce the amount of the Joint Venture's debt to FHP.
7. Except for purposes of replacement and repair EGC shall not remove or materially alter any of its equipment or tools from the project site at 3155 S. Lakeshore Drive, Chicago, Illinois

without the approval in writing from FHP. EGC warrants that it will maintain all such tools and equipment in a regular manner to assure continued use in the performance of the work under the subcontract agreement.

8. EGC warrants that it shall pay, perform and discharge any and all amounts, costs, expenses and liabilities incurred by the FHP/EGC Joint Venture, including any unpaid amount due under the loan described in this Advance Agreement, to FHP in enforcing these terms that shall become part of the obligations undertaken hereby, and shall be immediately due and payable by it to FHP upon demand and shall bear interest at the rate of 2 % over the prime rate then charged by MB Financial Bank from the dates of such expenditures until paid. Nothing contained in this Advance Agreement shall affect the obligations of EGC to FHP under the Joint Venture Agreement or to its obligations under the Joint Venture Agreement.
9. EGC will not, without obtaining the prior written consent of FHP enter into any agreement with a third party which would in any way impair the ability of EGC to perform its obligations under this Agreement.
10. EGC will promptly notify FHP of any event or circumstance which may impair EGC's ability to perform this Agreement.
11. EGC shall keep all insurance and other obligations of the Subcontract Agreement in full force and in good standing.
12. If EGC breaches any of the terms set forth in this Agreement the Joint Venture Agreement or the Subcontract Agreement it shall be considered a default entitling FHP or the Joint Venture to pursue any of their legal remedies available to collect all sums advanced pursuant to this Agreement and the interest thereon. The exercise of any right under this Agreement shall not be deemed a waiver of any other right or rights. In the event FHP breaches any of the terms set forth in this Agreement EGC shall have the same right to pursue legal remedies.
13. No breach or default of EGC hereunder shall be deemed to have been waived by FHP except by a writing to that effect signed on behalf of FHP by an officer thereof, and no waiver of any such breach or default shall operate as a waiver of any other breach or default. All rights, remedies, and privileges of FHP hereunder shall be cumulative and not alternative, and shall, whether or not specifically so expressed, inure to the benefit of FHP, its successor and assigns, and all obligations of EGC shall bind its successors and legal representatives.
14. This Agreement shall remain in full force and effect until all of the obligations and any extensions or renewals thereof shall be performed or paid in full.

Edward E. Gillen Co.

Attest:

By: _____

By: _____

Title: _____

Secretary

F. H. Paschen, S.N. Nielsen & Associates, LLC

Attest:

By: _____

By: _____

Title: _____